ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2612 OF 2007

Shri Ajit Baburao Patil & Ors. ...Petitioners

Vs.

M/s. Manohar Stores & Ors. ...Respondents.

Mr.P.A.Mulla i/by Mr. S.M.Kamble for the petitioners.

Mr. Amit Borkar for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 21st August, 2007

P.C.

1. As the petitioners, the original plaintiffs' application under Order 6 Rule 17 for amendment is partly allowed by the impugned order dated 30th September, 2006. Therefore, the present writ petition.

2. The petitioners have filed the suit against the respondents for perpetual injunction and for possession. The respondents resisted the suit, impugned in the ownership. In view of the change of circumstance, as Kolhapur Municipal Corporation has acquired the part of the premises and as the respondents were trying to carry construction of remaining portion of the premises, therefore, the suit

for injunction has been filed.

3. The petitioners, thereafter, moved an application Exh. 68 under Order 6 Rule 17 for amendment. The trial court, after considering the rival submission has granted the amendment, with regard to the para 2B of the application. However, rejected in so far as the para 2A of the application.

4. It is settled principle of law of amendment in the pleadings that, the Court should take liberal approach, subject to the plea/ defence available to such amendment, normally should be allowed.

5. Therefore, having allowed the amendment partly, the rejection of the remaining amendment on the ground that the plea of non user of six months is available to the landlord under the Maharashtra Rent Control Act, and therefore, in the present suit such ground is not necessary for eviction of licensee.

6. The facet which cannot be overlooked is that the plaintiff is moving the application for amendment. Merely because such plea of non user raised that itself cannot convert the suit into suit under

Maharashtra Rent Control Act, as observed. The parties are at liberty to raise pleas. The plaintiffs will suffer the consequences, if any party raising such pleas. Apart from this, the defendant/respondents have all rights to raise the pleas in response to the same.

7. In my view, therefore, raising of such plea itself cannot bring the suit within the ambit of the Maharashtra Rent Control Act as observed.

8. In view of this, the impugned order dated 30/09/2006 is modified to the extent that the application at Exh.68 is allowed subject to costs of Rs.300/-. The plaintiffs to amend the pleadings in respect of the facts raised in para 2a and 2b of the application. The amendment should be carried out within 14 days from the date of receipt of the copy of this order.

9. Resultantly, the writ petition is allowed.

10. No costs.

(ANOOP V. MOHTA, J.)